



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB134]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port Everglades Harbor Deepening and Widening Project, Florida

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers (USACE), Jacksonville District, for authorization to take, by Level B harassment only, small numbers of marine mammals incidental to the Port Everglades Harbor Deepening and Widening Project (Project), in Broward County, Florida, for a period of five years from August 2024 through August 2029. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of USACE's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on USACE's application and request.

DATES: Comments and information must be received no later than *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]*.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Harlacher@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of USACE's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an immitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the

permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 3, 2020, NMFS received an application from the USACE requesting authorization for take of marine mammals incidental to confined blasting associated with the Port Everglades Harbor Deepening and Widening Project, Broward County, Florida. We provided comments on the application and the USACE submitted a revised version on April 3, 2021. We deemed the application adequate and complete on April 29, 2021. The requested regulations under which we would issue the requested LOA would be valid for five years, August 2024 and August 2029. The USACE plans to conduct confined underwater blasting to deepen and widen the Port Everglades harbor and entrance channel. Blasting may incidentally expose marine mammals to elevated levels of noise, thereby resulting in incidental take, by Level B harassment only. Therefore, the USACE requests authorization to incidentally take marine mammals.

Specified Activities

The purpose of the proposed project is to provide for increased navigational safety, efficiency, and improved economic conditions for ships calling at Port Everglades. The existing federal channel project depth of 42 feet at Port Everglades does not provide an adequate, safe depth for large tankers and container ships currently visiting the harbor. Furthermore, the next generation of container ships and oil tankers requires significantly more channel depth to operate efficiently and a wider and deeper entrance channel will greatly improve the safety of navigation. To achieve the proposed deepening and widening of Port Everglades, pretreatment of rock areas may be required using confined underwater blasting where dredging or other rock removal methods are unsuccessful due to the hardness and massiveness of the rock. The USACE anticipates a maximum of 280 confined, stemmed blasts would occur over the life of the LOA, if issued, at a rate of one blast per day. Blasting operations may take place six days a week with a maximum of one blast occurring per day. Confined underwater blasting operations will be prohibited between November 15 and March 15 in order to avoid take of the West Indian Manatee (*Trichechus manatus*). Blasting would occur in six designated areas: the outer entrance channel, inner entrance channel, main turning basin, widener, south access channel, and turning notch. The USACE's application contains mitigation and monitoring measures designed to reduce impacts to marine mammals. The application also contains proposed marine mammal and acoustic monitoring and reporting plans.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning USACE's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by USACE, if appropriate.

Dated: May 4, 2022.

Kim Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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